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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,388	05/25/2001	Mary Kay Bitton	212/332	4199

23371 7590 04/21/2004

CROCKETT & CROCKETT  
24012 CALLE DE LA PLATA  
SUITE 400  
LAGUNA HILLS, CA 92653

EXAMINER

LECHERT JR, STEPHEN J

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

K.H

<b>Office Action Summary</b>	Application No. 09/865,388	Applicant(s) BITTON, MARY KAY	
	Examiner Stephen J. Lechert Jr.	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2004 and 23 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-10 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

- 1. Applicant's arguments of January 26, 2004 have been fully and carefully considered. Applicant's arguments are not persuasive for reasons of record in the office action mailed September 25, 2003 and the following:**
- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**
- 3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**
- 4. Claims 1-4 and claims 7-10 remain rejected under 35 U.S.C. 103(a) as being unpatentable over McCook in combination with Conrad for reasons of record in Paragraphs 5 of the office action mailed 9-23-2003 which will not be repeated herewith.**
- 5. Applicant has argued the examiner has failed to provide a motivation for modifying McCook with the teachings of Conrad. The**

**examiner respectfully disagrees with applicant because McCook teaches a hand held device for imprinting images in a soft surface specifically sand with a sand die. McCook teaches using a die for imprinting sand. Conrad teaches a die which is a cookie cutter, a die is generic to a cookie cutter. The fact that Conrad is using his die for cutting cookie dough is not an appropriate argument because Conrad is used to show that a die which has a silhouette blade which cuts the outline and detail blades which imparts the details in the bounds of the silhouette blade for what ever figure is to be imprinted.**

**Specifically, a clown face die in Conrad provides a die having the silhouette of the clown face and then the detail blades used to partially cut to give the details of the face. The examiner has provided adequate motivation which to reiterate, the prior art teaches using a die to impart an image into sand. The deficiency in McCook is in the detail blades. Conrad teaches a die having a silhouette blade and detail blades, the detail blades do not cut through the full thickness of the surface to be imprinted. The fact that the die is used on cookie does not disqualify or indicate non-analogous art because a sand die**

**has been taught, a die including details has been taught, the combination has been fairly taught and suggested by the prior art, the is not exclusion that the die of McCook could not be used in cutting cookie dough, similarly there is no exclusion that the die cutter taught of Conrad could be used in cutting material other than cookie specifically sand or snow. For those reason and those delineated in the past office, it is maintained the combined teachings of McCook and Conrad render applicant's claims as a whole obvious to one having ordinary skill in the art at the time the invention was made.**

**6. With respect to applicant arguments regarding claims which include the limitations of blade thickness, blade depth and distance between blades. The examiner again respectfully disagrees with applicant and maintains that where a die including a silhouette blade and detail blade have been taught, to provide detail blades having various thickness, depth and spacing between the details blades where details have been taught for the same purpose, i.e., providing details of a clown or figure is and would have been obvious to one having knowledge and skill in making dies which impart a figure or**

**face or design into a soft medium such as cookie dough or sand or snow.**

**7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).**

**A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.**

**8. The examiner would like to express to applicant and applicant's representative that from personal experience my own children have used cookie cutters in the sand for imprinting shapes into the sand. I have also seen many other parents using many other implements**


**which are basically dies or cutters for imprinting sand i.e. cookie cutters or now sand cutters which are on sale at the dollar stores (they don't have the detail blades) to using Popsicle sticks or knives. The examiner is aware that perhaps applicant has a better die for imprinting sand than some of the dies on the market. The examiner remains firm that applicant's invention has been fairly taught and suggested by the prior art, has been practiced by many children at the beach and the invention as a whole is obvious to one having ordinary skill in the art at the time the invention was made. Applicant has not shown that the invention is an improvement over the prior art's dies by evidence of commercial success or evidence that the die would be different than a die such as described by Conrad.**

**9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Lechert Jr. whose telephone number is 571-272-1203. The examiner can normally be reached on 9:30-6:00.**

**If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on**

**571-272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.**

**Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).**

  
**Stephen J. Lechert Jr.**  
**Primary Examiner**  
**Art Unit 1732**